

Docket No. F-8958

Ser. No. 10/573,214

REMARKS

Claims 1 and 3-20 remain pending in this application. Claims 1 and 3-20 are rejected. Claims 1 and 4 are amended herein to clarify the invention

The Substitute Specification is amended to correctly refer to Fig. 8 on page 4, instead of Fig. 7. As related on pages 6 and 13, Fig. 7 is directed to the third embodiment of the present invention and does not show a conventional article. No new matter is added.

REQUEST FOR ACKNOWLEDGMENT OF PRIORITY DOCUMENT

Applicants gain respectfully request that the Examiner acknowledge receipt of the priority document(s) filed in this application. Since the present application is a national stage application of a PCT application, the priority document was filed with the International Bureau. If the priority document has not be obtained, the Examiner is respectfully requested to obtain the priority document from the PCT/designated office unit in the U.S. Patent Office and acknowledge receipt thereof in the next Office Action.

INTERVIEW ACKNOWLEDGMENT

The applicant and applicant's attorney appreciate the Examiner's granting of the telephone interview conducted on February 4, 2010, and extend their thanks

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to the Examiner and his Supervisory Examiner for their time and consideration. During the Interview, the basic premise of the invention was discussed and also the the specific embodiments. Details of the interview discussions are presented below in relation to the pertinent subject matter of the Office Action.

CLAIM REJECTIONS UNDER 35 U.S.C. §103(a)

Claims 1 and 3-20 are rejected as obvious over the Shimoe reference in view of the JP '593 reference under 35 U.S.C. §103(a). The applicant herein respectfully traverses this rejection. For a rejection under 35 U.S.C. §103(a) to be sustained, the differences between the features of the combined references and the present invention must be obvious to one skilled in the art.

It was explained that the invention is directed to improving liquid retention while minimizing the bulk of the article. This is accomplished by providing longitudinal grooves in the middle-height portion which results in grooves with equal height walls on both sides. Since, as acknowledged by the Examiner, the lower height wall of unequal height groove walls of the Shimoe reference would determine fluid retention, the present invention necessarily provides better liquid retention for a given maximum thickness of the absorbent article. For example, in prior art Fig. 9 of the present application, the grooves 42 and 43 have limited liquid retention based on the height of the lower wall which is outside the middle

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height portion. Yet, the overall height of the article is based on the middle height portion. Hence, the liquid retention is based on the lower walls of the grooves 42 and 43, while the bulk is determined by the middle height portion 42.

In contrast, the present invention claims the grooves as follows:

leakage preventing grooves, extending in said longitudinal direction of the absorbent article which is orthogonal to a lateral direction extending between said opposing outer absorbent body edges, said leakage preventing grooves being provided in the middle-height portion of the absorbent body and on either side of a mid-portion of the middle-height portion positioned about midway between the first and second middle-height portion longitudinal ends, and said leakage preventing grooves having opposing side walls formed in said middle-height portion such that depths of said opposing side walls of said leakage preventing grooves are equal on opposing sides of said leakage preventing grooves;

said leakage preventing grooves extending longitudinally at positions proximate said opposing middle-height portion side edge steps of the middle-height portion so as to border the mid-portion of the middle-height portion on both longitudinally extending sides of the mid-portion, respectively, up to positions proximate said first and second middle-height portion longitudinal ends [.]

The above placement of the longitudinal grooves in the constant middle-height portion and so as to border side of the mid-portion of the middle-height portion permits the leakage preventing longitudinal grooves to provide leakage retention in the sideways direction, i.e., traversing the longitudinally extending sides of the mid-portion. Superior liquid retention is determined by the equal height walls being situated along the mid-portion of the middle-height portion, rather than a wall height outside the middle-height portion. Thus, the bulk determined by the

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middle-height portion yields greater liquid retention capacity than the retention provided by grooves that would be situated outside the middle-height portion, as taught by the Shimoe reference and the JP '593 reference

In view of the above explanation, it appeared that during the interview appreciation of the different functioning of the invention over structure presented by the either the Shimoe or JP'593 reference was achieved. This difference in function clearly removes from contention the Examiner previous rejection based on a flat shaped being the same as a rounded shape and, therefore, an obvious design choice. The Court of Appeals of the Federal Circuit has stated that the finding of "obvious design choice" is precluded where the claimed structure and the function it performs or functioning thereof are different from the prior art. *In re Chu*, 36 USPQ2d 1089 (Fed. Cir. 1995); See *In re Gal*, 980 F.2d 717, 25 USPQ2d 1076 (Fed. Cir. 1992). Furthermore, applicant need not detail such differences in the specification since it is not for the applicant "to divine the rejections the PTO will proffer when patent applications are filed. *In re Chu*. Accordingly, it is respectfully submitted that the applicants have set forth above the functional differences of the noted feature and reliance of the Examiner on the abstract geometric theory of the Office Action is rendered unsustainable.

During the interview applicant's attorney further pointed out that the rejection of claim 4 was improper because the claim *requires* the folding of the

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absorbent article along fold lines and the Office Action's reference is to a width indicating doubled-arrow line which has nothing to do with folding, and does not teach the claimed folds. During the interview the Supervisory Examiner apparently did not understand that claim 4 *requires actual folding* of the article claimed. It is submitted that further claim evaluation by both the Examiner and the Supervisory Examiner is warranted. It is submitted the rejection set forth does not provide weight to the folds claimed and that the reasoning is based on unsupported and erroneous conjecture as to what the line "W" might be *misconstrued as capable of being* which is totally irrelevant because the reference does not teach the folded structure claimed. Specifically claim 4 requires:

front and rear folds, folding the absorbent article in three into a packaging configuration, extend in said lateral direction and are respectively disposed in the standard-height portion beyond said first and second middle-height portion longitudinal ends.

Applicant is not claiming imaginary lines as apparently supposed in the interview, but is instead claiming the article *being* in a packaging configuration wherein it is folded in three. Actual "folds" are claimed, i.e., the "front and rear fold." This is clearly supported in the Substitute Specification in the following text:

In the invention from the fourth aspect, the middle-height portion is formed between the front and rear folding lines at the time of folding the absorbent article in three at the time of individual packaging. The absorbent article as the product folded in three, is therefore, made to be thin.

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Substitute Specification, page 5. Also, this aspect is reflected in the following text:

According to the present invention, even if a lot of body fluid is discharged at a time, the body fluid can be sufficiently blocked, and the leakage to the front-rear direction of the product but also the sideways leakage of the fluid body to the widthwise direction can be prevented. Further, since the outside of the middle-height portion is thinned by press forming, uncomfortable feeling at the time of attaching can be reduced, and since the middle-height portion is formed between lines for folding in three, the thickness can be reduced in a product form.

Substitute Specification, pages 5 and 6.

Finally, it is noted that the Interview Summary states that applicant's attorney suggested that the '593 reference taught lateral grooves that were not intended to perform liquid retention. In actuality, it was stated that the lateral grooves are at front and back ends of the napkin disclosed and hence not areas as critical as the areas of liquid retention which are the left and right sides of the mid-portion of the napkin which are surrounded by the leakage-preventing grooves. Applicant's attorney indicated that he was not in possession of a full translation of the JP '593 reference and does not intend to misrepresent the '593 reference..

Finally, it will be noted that claim 1 is amended to recite that the middle-height portion is "laminated" over the standard height portion. The claim further states that the grooves are deeper than the middle-height portion. Therefore, contrary to assertion in the Office Action that the claim does not require separate

